XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 883 OF 1996

APPELLANT : Kodulal Patel S/o Shiv Palak Patel aged about 39 years, occupation service r/o village Patratoli, Block Duldula, P.S. Kunkuri district Raigarh.

Versus

RESPONDENT : State of Madhya Pradesh, District Magistrate, Raigarh District Raigarh (M.P.)

Present

Mr. Rajendra Tripathi, counsel for the accused/appellant.

Mr. Pradeep Singh, P.L. for the State/respondent.

O R A L J U D G M E N T

(26th July 2007)

Per Dhirendra Mishra, J

The appellant has preferred this appeal against the judgment dated 15.5.1996 passed in Special Case No. 12/96 whereby the learned Special Court, Jashpurnagar District Raigarh has convicted the appellant under Section 354 of IPC and sentenced to undergo R.I. 19 days and pay a fine of Rs.3,000/-, in default thereof, to further undergo S.I. for one

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

year. The appellant was also prosecuted under Section 3(1)(11) of the Scheduled Castes & Scheduled Tribe (Prevention of Atrocities) Act. However, learned trial Court has acquitted the appellant of the aforesaid charge.

2. Learned counsel for the appellant submits that the allegation made against the appellant is that on 15.1.1996 the prosecutrix had gone to Village Patratoli, where the appellant who is secretary of the Village Panchayat Champatoli resides, in connection with some official work. On the repeated requests of the appellant, she accompanied him to his house. Thereafter, the appellant tried to make indecent advances towards the prosecutrix and while she was going out of his house, he caught hold of her hand and started dragging. She narrated the incident immediately to Secretary of Patratoli who disclosed it to Kanchandevi also. However, report was lodged only on 18.1.1996 in police station Jashpurnagar.

3. Learned counsel for the accused/appellant submits that the appellant is in government service and he has already served the jail sentence imposed on ~~his~~ him and paid the fine amount. He further submits that from the evidence available on record it would be evident that it's a case of false implication as the incident is alleged to have occurred on 15th January 1996, however, report of the same was lodged on 18th January 1996 and the explanation given by the prosecutrix for delay in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

lodging the report is not convincing as she has stated that because she was busy in Panchayat work, therefore, she could not lodge the report promptly. He further submits that there was a dispute between the prosecutrix, her husband and the appellant in connection with transaction of Rs.900/-. Referring to paragraph 5 of the statement of prosecutrix and further, paragraph 4 (wrongly mentioned as '4', in fact it is '6') of cross-examination of PW-5 Viraj Minj, husband of the prosecutrix, it is submitted that there was some dispute between husband of the prosecutrix and the appellant in connection with transaction of money and only because of this grudge, the prosecutrix after due deliberation with her husband and one Daud of the village has implicated the appellant in the said offence.

4. On the other hand, learned counsel for the State supported impugned judgment of the trial Court.

5. I have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

6. From perusal of the F.I.R. of Ex.P/1 lodged by the prosecutrix it is observed that the incident is stated to have occurred on 15th January 1996 at about 10.00 hours whereas report of the same was lodged on 18th January 1996 at about

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

15.40 hours in the police station Jashpurnagar and reason assigned for delay in lodging the report is that the prosecutrix was busy in Panchayat affairs. In the report the complainant has stated that she had gone in connection with Panchayat work to village Patratoli where she met Gram Sevak who asked her to accompany him up to his house and after reaching his house he asked her to sit on his bed, on which when she sat on the chair, he started eve teasing. When the prosecutrix was about to come out of his house, he caught hold of her hand and started dragging. However, she somehow managed to come out. Whereas in her deposition before the Court she has made material improvements over the version she has given in her F.I.R. with respect to requests of the appellant that he wanted to have sexual intercourse with her and he would satisfy her sexually. She has also stated that she narrated the incident to Kanchandevi who has been examined as PW-3. though this fact has not been recorded in the F.I.R.

7. PW-3 Smt. Kanchandevi has also stated that on the date of incident the prosecutrix came to her house and complained against the accused of eve teasing. This witness has further stated in paragraph 2 of her statement that it was opinion of the villagers that Lili Minj has falsely implicated the accused. PW-5 Viraj Minj, husband of the prosecutrix, has stated in paragraph 4 (wrongly mentioned as '4', in fact '6') of his cross-

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

examination that it is correct to say that there was some dispute between the accused and himself regarding transaction of money taken for digging the well. He had discussed with his wife about the case and it is correct to say that he and his wife on the advice of one Daud, had foisted this case on the accused.

8. Thus, from the evidence available on record taking into consideration the fact that the report of the incident was lodged after three days and explanation given by the prosecutrix for delay is not convincing and further considering the improvements made by the prosecutrix during her Court statement and also considering the admission of her husband that they in consultation with one Daud had foisted a false case on the accused/appellant, I am of the considered opinion that prosecution has utterly failed to prove the case against the accused/appellant and as such, the impugned judgment of the trial Court by which the appellant has been convicted under Section 354 of the IPC cannot be sustained.

9. In the result, the appeal is allowed. Conviction of the appellant under Section 354 and sentenced passed thereon, are set aside. He is acquitted of all the charges.

Sd/-
Dhirendra Mishra
Judge

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